

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANRIQUE BARTON,

Plaintiff,

v.

CASCADE REGIONAL BLOOD
SERVICES,

Defendant.

Case No. C06-5644RBL

ORDER

THIS MATTER comes before the Court upon Defendant's Motion for Order Directing Plaintiff to Submit to a Mental Examination pursuant to Fed. R. Civ. P. 35(a) [Dkt. #21]. The Court has considered the motion and affidavit, plaintiff's opposition and declaration, and defendant's reply, and for the reasons stated herein hereby **DENIES** defendant's motion.

This is a civil case wherein plaintiff alleges that defendant discriminated against him based upon his race in violation of 42 U.S.C. §2000(e) and the Washington Law Against Discrimination, RCW 49.60. Plaintiff claims damages for, inter alia, emotional distress. Federal Rule of Civil Procedure 35(a) provides that a party may request the Court to order the mental examination of another party if the party's mental health is "in controversy," but must show "good cause" in order to obtain the examination. Here, despite language in the complaint to the contrary, plaintiff asserts that he is not making a claim for ongoing emotional distress. (Pl.'s Opp. Dkt. #22, p. 1). Therefore, plaintiff's current mental state is not "in controversy." *See Turner v. Imperial Stores*, 161 F.R.D. 89, 97 (S.D. Cal. 1995). Moreover, defendant has obtained through discovery

1 the medical records of plaintiff's mental health providers and has noted their depositions. Thus, defendant has
2 not shown good cause for the mental examination because it has available to it the necessary information to
3 defend plaintiff's claim of emotional distress. *See Marroni v. Maley*, 82 F.R.D. 371 (D.C. Pa. 1979).

4 Defendant's Motion for Order Directing Plaintiff to Submit to a Mental Examination pursuant to Fed.
5 R. Civ. P. 35(a) [Dkt. #21] is **DENIED**.

6 **IT IS SO ORDERED.**

7 Dated this 4th day of September, 2007.

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10 RONALD B. LEIGHTON
11 UNITED STATES DISTRICT JUDGE
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